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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Federal Trade Commission,

Plaintiff,

v.

Electronic Payment Solutions of America, Inc.,
an Arizona corporation;

limited liability company;

Electronic Payment Transfer, LLC, a Colorado limited liability company;

John Dorsey, individually and as an officer of Electronic Payment Systems, LLC and Electronic Payment Transfer, LLC;

Thomas McCann, individually and as an officer of Electronic Payment Systems, LLC and Electronic Payment Transfer, LLC; and

Michael Peterson, individually and as Risk Manager of Electronic Payment Systems, LLC,

Defendants.

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC's Trade Regulation Rule entitled Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 6102(c), and 6105(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (c), and 15 U.S.C. § 53(b).

SUMMARY OF CASE

4. This is an action by the FTC for injunctive and equitable monetary relief on behalf of consumers against Defendants for their actions in laundering credit card transactions on behalf of a deceptive telemarketing scam called Money Now Funding ("MNF" or "MNF scam"). In 2013, the FTC sued MNF for telemarketing worthless business opportunities to consumers and falsely promising that consumers would earn thousands of dollars in income. In 2015, the court entered summary judgment and default

judgments against certain MNF defendants, finding the business opportunities were a complete fraud, as alleged in the complaint, and that consumers who purchased these opportunities lost thousands of dollars each, resulting in $7,375,258.84 in total consumer injury. Each of the remaining MNF defendants settled in 2015.

5. The principals of the MNF 7(ls of)-9.dof1cgtoe 83.l cd1cgtoe 834 012.96 0 0 12.96

bank; between them are the credit card networks (*e.g.*, VISA) and other third parties such as "independent sales organizations" involved in processing a transaction.

8. An independent sales organization ("ISO") solicits merchants seeking to open credit card merchant accounts and refers them to the ISO's acquiring bank ("acquirer"), which is the bank that has access to the credit card networks. In some cases, ISOs perform the underwriting of merchants for their acquirer and/or process consumer credit card payments on behalf of their acquirer, either directly or through the services of payment processors.

9. Through the ISO's relationship with acquirers, ISOs function as important gatekeepers, screening out and preventing fraudulent merchants from gaining access to the credit card networks, or identifying such merchants once they have gained access. Conversely, an ISO that is complicit with a fraudulent merchant can provide such a merchant access to the credit card networks that the merchant would not otherwise be able to obtain or maintain.

10. Defendant Electronic Payment Systems, LLC ("EPS") is an ISO that markets ISO and payment processing services to prospective merchants. In 2012 and 2013, EPS served as the ISO for the entities involved in the MNF scam.

11. EPS engaged in the underwriting and approval of MNF's fictitiouochant c.5(ing 2

12. EPS used ISO "sales agents" to market its processing services to merchants. Three of these sales agents, Defendants Jay Wigdore, Michael Abdelmesseh, and Nikolas Mihilli, directly participated in the MNF credit card laundering scheme.

13. Defendant Wigdore submitted the merchant applications for the MNF fictitious companies to EPS. Once EPS processed MNF's transactions through the fictitious company accounts, the MNF sales revenues were transferred to companies controlled by Defendants Wigdore, Abdelmesseh, and Mihilli, as well as participants in the MNF laundering scheme.

PLAINTIFF

14. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C. §§ 6101–6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.

15. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 6102(c) and 6105(b).

23. Defendant Wigdore is the President of EP Services and a director of EPSA. Individually and as an officer of EP Services and EPSA, Wigdore acted as an ISO sales agent for EPS. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of EP Services, EPSA, and KMA, including the acts and practices set forth in this Complaint. Wigdore transacts or has transacted business in this district and throughout the United States.

24. Defendant Abdelmesseh, also known as Michael Stewart, is a director of EPSA and a managing member of KMA. Individually and as an officer of KMA and EPSA, Abdelmesseh acted as an ISO sales agent for EPS. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of EP Services, EPSA, and KMA, including the acts and practices set forth in this Complaint. Abdelmesseh transacts or has transacted business in this district and throughout the United States.

25. Defendant Mihilli is an officer and member of Dynasty Merchants, LLC. Mihilli worked as a sub-agent for the ISO sales offices of Defendants Wigdore and Abdelmesseh. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Dynasty Merchants, LLC, including the acts and practices set forth in this Complaint. Mihilli transacts or has transacted business in this district and throughout the United States.

The EPS Defendants

26. Defendant Electronic Payment Systems, LLC ("EPS") is a Colorado limited liability company with its principal place of business at 6472 Quebec St., Englewood, Colorado 80111. EPS is an ISO and payment processor. Among other things, EPS markets payment processing services to merchants and arranges for merchants to obtain "merchant accounts" through which merchants can process credit card sales transactions. Using the services of payment processors, EPS processes credit card payments for merchants through EPS's acquirer. EPS transacts or has transacted business in this district and throughout the United States.

27. Defendant Electronic Payment Transfer, LLC ("EPT") is a Colorado limited liability company with its principal place of business at 6472 Quebec St., Englewood, Colorado 80111. EPT is closely affiliated with EPS, and uses the dba "Electronic Payment Systems." EPT transacts or has transacted business in this district and throughout the United States.

28. Defendants EPS and EPT are controlled and owned by the same two principals, and are often referred to interchangeably as the same company. EPS is the outward-facing company to the public, while EPT is the entity that sometimes enters into the agreements that EPS holds with its acquirer and payment processors. This Complaint will refer to EPS and EPT collectively as "EPS."

29. Defendant John Dorsey ("Dorsey") is the CEO and co-owner of EPS and EPT. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of EPS and

telemarketers falsely told consumers they would earn income by referring small businesses seeking loans to MNF.

34. According to one sales pitch, in exchange for an upfront payment of $299 to $499, purchasers of MNF's business opportunity would go into business with MNF

BACKGROUND ON CREDIT CARD LAUNDERING

40. In order to accept credit card payments from consumers, a merchant must establish a "merchant account" with a merchant acquiring bank (as noted above, also referred to as an "acquirer"). A merchant account is a type of account that allows businesses to process consumer purchases by a credit or debit card.

41. The acquirer is the entity that has access to the credit card associations (such as Mastercard and VISA), and through which merchant accounts are established. Without a merchant account obtained through an acquirer, merchants are unable to process consumer credit or debit card sales transactions.

42. Acquirers commonly enter into contracts with ISOs, who solicit and sign up merchants for merchant accounts with the acquirer. In some cases, ISOs engage in the screening and underwriting of prospective merchants, operate the acquirer's merchant processing program (directly or through the services of third party processors), and monitor the merchants' transactions.

43. To market the ISO's processing services, ISOs often use ISO "sales agents," and persons working under these sales agents (called "sub-ISOs" or "sub-agents"), who solicit and refer prospective clients to the ISO for the ISO's underwriting approval.

44. The credit card associations ("card networks"), such as VISA and Mastercard, require all participants in their networks, including the acquirers and their registered ISOs, to comply with detailed rules governing the use of the card networks. These rules include screening and underwriting merchants to ensure that they are

legitimate bona fide businesses, and to screen out merchants engaged in potentially fraudulent or illegal practices. The rules also prohibit the practice of credit card laundering.

45. Merchants that pose a greater risk of fraud or financial loss to the ISO, acquirer and card networks may be denied merchant accounts. For example, the ISO or acquirer may be concerned that the merchant is engaged in deceptive marketing, illegal activity or will generate excessive rates of transactions returned by consumers ("chargebacks").

46. Consumers initiate "chargebacks" when they dispute credit card charges by contacting their "issuing bank," which is the bank that issued the credit card to the consumer. When a consumer successfully disputes the charge, the consumer's issuing bank credits the consumer's credit card for the disputed amount, and then recovers the chargeback amount from the acquirer (the merchant's bank). The acquirer, in turn, collects the chargeback amount from the merchant, either directly or through its ISO or payment processor.

47. In order to detect and prevent illegal, fraudulent or unauthorized merchant activity, the card networks operate various chargeback monitoring and fraud monitoring programs. For example, if a merchant generates excessive levels of chargebacks that trigger the thresholds set under VISA's chargeback monitoring program, the merchant is subject to additional monitoring requirements and, in some cases, penalties and termination.

programs by simply processing for short time periods, such as for a few weeks, that fall below the monitoring programs' time thresholds.

53. In addition to evading the card networks' merchant monitoring programs, fraudulent merchants sometimes spread their transactions across multiple merchant accounts in order to circumvent the underwriting requirements or monitoring programs of the ISO's acquirer. For example, if the acquirer's underwriting rules are more lenient for merchants with lower projected sales volume, fraudulent merchants can artificially lower the merchant's projected sales volume by applying for numerous low-volume merchant accounts in the names of fictitious companies, thereby obtaining the acquirer's underwriting approval that the merchant otherwise would not be able to obtain.

54. By spreading out merchant transactions across numerous and constantly changing fraudulent merchant accounts over short time periods, fraudulent merchants and unscrupulous ISOs can cause an enormous amount of economic harm to consumers, before their transactions are detected or terminated by the ISO's acquirer or the card networks.

DEFENDANTS' BUSINESS ACTIVITIES

The KMA-Wigdore Defendants Engaged In a Scheme To Launder Credit Card Payments For the MNF Scam

The KMA-Wigdore Defendants' Acts Directly Caused The Laundering Of MNF Transactions Through Numerous Fictitious Companies' Merchant Accounts

55.

the acquirer and card networks from scrutinizing and terminating its merchant account, MNF engaged in a scheme with the KMA-Wigdore Defendants to apply for a large number of fraudulent merchant accounts, each under a different fictitious name, through which MNF could launder charges to consumers' credit or debit card accounts.

56. As part of this scheme, MNF created numerous fictitious companies, each using the name of a MNF principal or employee as the straw owner or purported principal of the company. These phony companies did not engage in any actual business. Thus, for example, one fictitious company was called "D&D Marketing," the supposed owner of which was actually an MNF employee with the initials "D.D." When consumer-victims signed up for the MNF business opportunity and made a payment, their credit card statements would show a charge made by a company they had never heard of, such as "D&D Marketing," rather than Money Now Funding.

57. During the period from May 2012 to November 2012, Defendant Wigdore, as an ISO sales agent, submitted phony merchant applications on behalf of 23 fictitious companies to EPS for EPS's underwriting approval. These 23 fictitious companies created by the MNF scam include: Zoom Docs; Doc Assistant; US Legal Docs; D&D Marketing; JJB Marketing; A&D Marketing; Miller Marketing; Ronn Hobbs & Associates; Global One Media; DePaola Marketing; Wisdom Management Group; National Marketing Group; Rose Marketing; Green Merchant Marketing; KT Advertising; V&R Marketing; BC Media Solutions; Elite Marketing Strategies; AJ Marketing; Midwarren Enterprises; Montgomery Marketing; McIntyre Marketing; and LJT Marketing ("2012 MNF Fictitious Companies").

when MNF victims were duped into buying leads or making other payments as part of the MNF scam, some of them incurred credit card charges in the name of "Dynasty Marketing."

EPS Directly Caused the Laundering of MNF Transactions Through Numerous Merchant Accounts Created In The Names of Other Companies

74. Throughout 2012 and 2013, EPS directly caused consumers' credit or debit card accounts to be charged by MNF's deceptive telemarketing scam by underwriting and approving the MNF Fictitious Companies and the Mihilli and Abdelmesseh businesses for processing, establishing merchant accounts for these entities with Merrick, and processing for these merchant accounts.

75. Without the ISO and processing services provided by EPS, the MNF scam could not have obtained the fraudulent merchant accounts established at Merrick, through which their credit card transactions were processed.

EPS Touted Itself as a Processor for "High Risk" Merchants and Used Wigdore as a Sales Agent Despite His Criminal History

76. In order to solicit and locate prospective merchants, EPS operated an ISO sales program under which it used ISO "sales agents" to market EPS's services and to refer merchant applications to EPS for underwriting approval. EPS actively sought to recruit sales agents, and entered into independent contractor agreements ("Marketing Agreements") with these agents.

77. According to statements made by EPS in court filings in July 2016 (*see* Mot. To Quash (ECF No. 9), Electronic Payment Transfer, LLC v. Federal Trade Commission and Citywide Banks, No. CV-01653-RBJ (D. Colo. July 11, 2016)), EPS's

81. EPS's website actively sought out the business of "High Risk Merchants," and offered to help merchants set up "offshore merchant accounts." The website stated:

> Is your business having trouble getting approved for traditional merchant service accounts? Do you need a High Risk Merchant Account? . . . We can get your High Risk merchant account approved in a quick and professional manner. When US domestic banks won't accept a High Risk Merchant, EPS has special partnerships with international banks overseas to set up an offshore merchant account with.

82. As an ISO for Merrick, EPS was contractually required to comply with Merrick's underwriting rules for screening merchants, which included strict guidelines designed to verify the identity of the merchant and the legitimacy of the merchant's business, and to screen out merchants potentially engaged in fraud. Indeed, Merrick's policy required EPS to verify "that each merchant is a bona fide business and that the transactions of such merchant will reflect bona fide business between the merchant and the cardholder, and will not violate any applicable provision of law." EPS was also required to monitor its merchants' transactions, update merchant information in the merchant database, and ensure that its merchants complied with the card networks' rules and various fraud monitoring programs. As a registered ISO with VISA (through Merrick), EPS also was required to comply with VISA's rules and regulations.

83. However, rather than verify its merchants' identities, EPS opened merchant accounts in the names of numerous fictitious companies for the same underlying merchant, and thereby falsely represented the true identity of the fictitious companies. In concealing the true identity of the fictitious companies, EPS also evaded the various card network fraud and chargeback monitoring programs that were designed to detect and prevent fraudulent activity.

84. The chronology of EPS's involvement in the MNF scam's credit card laundering shows that EPS: (a) ignored obvious warning signs of fraud, including the

merchant account had triggered Mastercard's fraud monitoring program, and requesting additional merchant information.

b) On April 10, 2012, Merrick again emailed Peterson, notifying him that Mastercard was requesting additional information about KMA, including details "as to what fraud control measures in place at the merchant location…."

c) On April 17, 2012, Merrick's Risk Manager emailed Peterson regarding the KMA merchant account, this time alerting him to five consumer chargeback requests that indicated "Services not provided or merchandise not received" as the reason for the chargeback, and an additional chargeback complaint regarding a related KMA account that indicated "Fraudulent transaction no cardholder authorization."

d) On April 18, 2012, Merrick's Risk Manager emailed Peterson regarding KMA's 15.6% chargeback rate, stating: "This account is processing well over the assigned volumes and their chargeback ratio is unacceptable …."

e) On May 11, 2012, Merrick's Risk Manager again emailed Peterson regarding KMA:

> I have reviewed in detail your chargeback reduction plan for KMA. The business was incorporated in 2011 and I am inclined to not believe that they are unfamiliar with how to run their business. It is ironic that as soon as they came onboard with EPS their volume skyrocketed and

> described in the plan is unclear and sounds a lot like they are conducting lead generation, which Merrick was not comfortable with processing for in the first place ….

f) Merrick's email went on to express the opinion that KMA was engaging in load balancing, and instructed EPS to terminate the KMA accounts if KMA could not succeed in lowering its chargeback levels to an acceptable level:

> The other KMA account MID # xx 5830 also has been processing well over their capped volumes . . . and has unacceptable chargeback ratios**.** I personally believe that they are load-balancing and processing for both the account that was declined and the one we are discussing…. [Emphasis added]

87. As discussed in Paragraphs 51-53 above, "load balancing" refers to the practice of spreading out a merchant's transactions across numerous merchant accounts in order to limit the volume of transactions processed through any one single merchant account, and thereby to avoid triggering the chargeback thresholds for the acquirer's or card networks' chargeback monitoring programs.

88. As a result of Merrick's instructions to terminate KMA's merchant accounts, EPS stopped processing new transactions for KMA's merchant accounts around May 2012. However, EPS continued to approve merchant account applications submitted by KMA (acting in its capacity as EPS's sales agent).

May 2012 - June 2012: Merrick Rejected Merchant Applications Submitted By EPS Because They Appeared to Be KMA-Related

89. Even after Merrick instructed EPS to terminate the KMA merchant accounts of KMA due to concerns regarding load balancing, fraud, and excessive chargebacks, EPS and its principals nonetheless continued approving new merchant

applications submitted to it by the same entity, KMA (this time acting in its capacity as EPS's sales agent, rather than as a client merchant itself). EPS chose not to inform Merrick that KMA was the sales agent for these new merchant applications. However, when Merrick would discover a KMA connection, Merrick would decline the application.

90. On May 24, 2012, Merrick informed Defendant Peterson that it had declined three merchant applications because the alleged principals of these merchants all shared the same email address as the principal of the merchant KMA. Merrick noted that the three declined merchants "have principal email addresses with the alias being at kmamarketingsvcs.com – KMA had chargeback issues with us in the past."

91. One week later, on May 31, 2012, Merrick declined yet another application, again informing Peterson that the merchant "also appears to be linked to KMA Marketing which has had chargeback issues with us."

92. Two weeks later, on June 14, 2012, Merrick declined four more merchant applications, this time highlighting the fact that all four applications had been referred to EPS by the same sales agent ("sales channel 2088," a sales office number that EPS had assigned to KMA, acting as its sales agent), and that the merchants were all "home-based marketing companies," a business model that Merrick had indicated it was not comfortable with.

93. Despite these rejections and Merrick's repeatedly-stated desire not to do business with companies linked to the merchant KMA, Peterson continued to submit new merchant applications to Merrick that had been referred by EPS's "sales agent" KMA,

without informing Merrick that KMA was the underlying sales agent who had referred those applications to EPS.

May 2012 - November 2012: EPS Approved The 23 Fraudulent MNF Merchant Applications Provided By Sales Agent KMA Despite Multiple Suspicious Red Flags

94. From May to November 2012, Defendant Wigdore submitted 23 merchant applications on behalf of the 2012 MNF Fictitious Companies to EPS. Each application indicated that the sales agent was "Jay Wigdore" of ISO sales offchnT 934 f-ril(rchan)Wnotd

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f) In the case of at least five merchant applications, the address listed on the credit report did not match the address listed for the merchant on the merchant application.

g) For at least five of the merchant applications, an attached Application Addendum form stated that "Jay Wigdore" was a co-owner or co-officer of the alleged merchant, in addition to another co-owner or co-officer whose name was listed on the application form.

h) In the case of five merchants, the merchant's business bank account was listed on the application as "Comerica Bank," even though the checks attached to the applications indicated that the merchant's bank was Chase Bank, and not Comerica Bank. Despite this obvious inconsistency, EPS nonetheless approved these applications.

95. Had EPS sought to verify the legitimacy of the 23 merchant bank accounts, it would have discovered that the true account holder for each of the 23 Chase bank accounts was not the fictitious company whose name was printed on the check and listed on the merchant application, but a different company: Dynasty Merchants, LLC.

The EPS Defendants Concealed the Fact That the Fictitious Companies Were High-Risk Telemarketers, Thereby Shielding Them From Enhanced Scrutiny By Merrick or VISA

96. Many of the merchant applications for the MNF Fictitithe .21A

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"high risk"), prior to obtaining Merrick's approval. Even though the applications indicated that many of the MNF Fictitious Companies were engaged in telemarketing, EPS began processing for these entities prior to obtaining Merrick's approval, in direct violation of Merrick's rules.

May 2012 - July 2012: EPS Processed For At Least 11 Fictitious Companies Declined By Merrick, In Some Cases For More Than Two Months After They Had Been Declined

102. Not only did EPS begin processing for MNF's fictitious companies before these companies were approved by Merrick, EPS also *began processing* for certain MNF fictitious companies *even after* Merrick already had declined the applications for these same fictitious companies.

103. Between May 2012 and June 2012, Merrick declined 11 fraudulent merchant applications approved and submitted by EPS on behalf of the 2012 MNF Fictitious Companies. EPS nonetheless continued processing for these fictitious companies, in some cases for more than two months after they had been declined by Merrick.

104. By the end of June 2012, EPS had processed more than $573,000 in transactions for the 11 declined fictitious companies, for time periods ranging from just two weeks to eight weeks per merchant—short time periods that fall below VISA's chargeback monitoring program thresholds.

105. Below is a list of the 11 fictitious companies declined by Merrick, the time periods EPS processed for each company, and the amount of transactions processed through each merchant account:

MNF Fictitious Company	Time Period Processed	Amount Processed
JJB Marketing	4 weeks	$ 29,600
Miller Marketing	7 weeks	$ 67,400
Ron Hobbs	5 weeks	$ 32,100
National Marketing GP	4 weeks	$ 52,500
Rose Marketing	5 weeks	$ 50,247
Wisdom Management	6 weeks	$ 64,000
D&D Marketing	6 weeks	$ 80,400
DePaola Marketing	2 weeks	$ 9,500
KT Advertising	8 weeks	$115,050
V&R Marketing	7 weeks	$145,100
Green Merchant	2 weeks	$ 55,598

July 2012 - September 2012: After Merrick Declined 11 Merchant Applications

the credit report for a third merchant (McIntyre Marketing) did not match the merchant address listed on the application. For four of the merchants, the initial risk review conducted by an EPS employee specifically noted that no marketing materials or web listings for the merchant had been submitted or found. (BC Media Solutions, Montgomery Marketing, McIntyre Marketing, LJT Marketing). Despite these obvious red flags, EPS nonetheless approved all seven applications.

108. As in the past, EPS processed for these seven new accounts for short time periods, typically ranging from three to seven weeks.

Consumer Chargebacks Indicated That Some of the Fictitious Company Merchant Accounts Approved By EPS Were Used To Launder MNF Transactions

109. Merrick's underwriting policy required EPS to monitor its client merchants' transactions "in order to detect unusual or unacceptable trends in such Merchant's processing activity," and to monitor its merchants' chargeback transactions and consumer inquiries relating to these chargeback transactions.

110. EPS regularly monitored its merchants' chargeback transactions. Through the processing platforms provided by two payment processors, EPS had access to its merchants' chargeback transaction data, together with the consumer complaints that accompanied chargeback requests.

111. Once EPS began processing for the 23 accounts set up for the 2012 MNF Fictitious Companies, these accounts began generating substantial chargebacks, many of which included "chargeback reason codes" indicating that the merchant's charges either

were not authorized by the consumer, were fraudulent, or that the merchant failed to provide the goods or services as promised.

112. In some cases, the chargeback requests included consumer complaints and documentation clearly indicating that the merchant involved was "Money Now Funding," and not the fictitious company whose name was on the merchant account—obvious evidence of credit card laundering.

113. Despite having clear evidence of illegal credit card laundering through a KMA merchant account, EPS not only failed to stop doing business with KMA, but actively sought to protect KMA's ability to continue laundering, as set forth below.

September 2012: EPS's Risk Manager Knew That MNF Transactions Were Laundered Through a KMA Merchant Account, and Directly Instructed KMA to Spread Out Its Merchant's Transactions Across Numerous Merchant Accounts

114. As EPS's Risk Manager, Defendant Peterson oversaw EPS's Risk Department, and closely interacted with EPS' principals, Defendants Dorsey and McCann, and EPS's Chief Operating Officer ("COO").

115. Peterson directly communicated with Defendants KMA and Abdelmesseh on a regular basis, and knew that KMA was acting as both EPS's sales agent and a "client merchant" for whom EPS processed transactions. Peterson knew that MNF transactions were being laundered through at least one of KMA's three merchant accounts, in the name KMA Merchant Services.

116. On September 4, 2012, Peterson received an email from an EPS employee working directly under Peterson's supervision. The email forwarded to Peterson a consumer's chargeback dispute documentation for a "KMA Merchant Services"

121. The referenced merchant accounts ("the accounts that are on hold") included at least twelve of the 2012 MNF Fictitious Companies' merchant accounts that EPS had opened and used to process MNF transactions.

122. With respect to one of these merchant accounts, Peterson placed an explicit note: "On Hold – Pay out Tuesday – Do not put any more volume for the month through this one!"

123. Because Merrick's underwriting rules or monitoring practices were in part based on a merchant's projected or actual sales volume, a fraudulent merchant might obtain Merrick's approval or avoid Merrick's scrutiny if it appeared to process a lower volume of transactions.

124. By knowingly processing transactions for the same underlying merchant (that is, MNF) through multiple merchant accounts opened in the names of the fictitious companies, Peterson directly engaged in credit card laundering. He knowingly concealed the true identity of the merchant (MNF). Peterson also engaged in tactics to evade Merrick's underwriting rules or monitoring practices and the card networks' chargeback monitoring programs, by spreading out the MNF transactions across multiple merchant accounts in order to artificially lower the volume of sales and chargeback transactions processed through any single merchant account.

By February 2013, EPS Knew That The 2012 MNF Fictitious Companies Had Changed Their Addresses to the Same Address, But Continued Using Wigdore and Abdelmesseh As EPS's Sales Agents

125. In a February 21, 2013 email from KMA to an employee working in EPS's Risk Department, KMA provided EPS a list of address changes for numerous client

channel 2088." These included phony merchant applications for the 2013 MNF Fictitious Companies.

130. Like the merchant applications for the 2012 MNF Fictitious Companies, the applications for the 2013 MNF Fictitious Companies contained obvious signs that the merchants likely were not legitimate businesses and were related to the same underlying merchant. For example, at least 14 supposedly different merchants purported to have bank accounts at the same bank branch, this time at a Wells Fargo Bank branch located in Mesa, Arizona.

131. The 2013 MNF Fictitious Companies included four fictitious entities controlled by Luke Rose, the principal of the MNF scam (S&P Marketing, CMH Marketing, CMT Marketing, GJ Financial). EPS processed at least $98,300 in transactions for these four fictitious companies combined.

132. The 2013 MNF Fictitious Companies also included fictitious companies controlled by managers of the MNF scam. One MNF manager, Cordell Bess, created a new fictitious company (Premier Online Marketing Strategies) to replace his previous fictitious company (JJB Marketing). In 2012, EPS had processed for JJB Marketing, until Merrick instructed EPS to terminate the company. The EPS employee who reviewed the application for Bess's new company (Premier Online Marketing Strategies) specifically noted that EPS already had opened a "previous account" for the same underlying merchant. EPS nonetheless approved and processed $62,795 in transactions for this new fictitious company.

133. A second MNF manager, Cynthia Miller, also known as "Cynthia Metcalf" and "Cynthia Wilson," controlled at least 13 of the 2013 MNF Fictitious Companies ("Cynthia Miller Fictitious Entities"), including: Jones Advertising Options; A&P Marketing Solutions; Phipps Marketing Advantages; Rogers Online Marketing; Prompt Preparation Services; Independent Home Solutions and Marketing; Elite LLC Preparation Services; Quintin Marketing Strategies; Priority Online Marketing Strategies; JSK Marketing; SNC Advertising; Luczko Marketing and Advertising. EPS processed a total of $1,666,003 in transactions through the 13 Cynthia Miller Fictitious Entities combined.

134. Defendant Peterson was fully aware that the Cynthia Miller Fictitious Entities were in fact related to the same underlying merchant or individual. Indeed, in a spreadsheet attached to an email dated January 30, 2014 from Defendant Abdelmesseh ("Mike Stewart") to Mike Peterson, Abdelmesseh listed the names of the 13 merchants, the name of the straw "owner" of each merchant, and indicated that all 13 merchants in fact belonged to the same "Group" that was associated with one individual – "Cynthia Wilson."

135. In 2013, EPS processed more than $1,827,098 of MNF transactions for the 2013 MNF Fictitious Companies combined.

July 2013: EPS Falsely Represented To Law Enforcement That It Was No Longer Doing Business With KMA

136. On July 18, 2013, the Oregon Department of Justice ("Oregon DOJ") contacted EPS, informing it of an investigation into an entity possibly related to KMA for violations of the Telemarketing Sales Rule and other laws. The Oregon DOJ investigator

asked EPS to clarify its relationship with KMA, and asked whether KMA was acting as a "satellite office" of EPS or as an EPS independent contractor.

137. In response to the Oregon DOJ's inquiry, EPS's COO sent an email, dated July 18, 2013, in which he falsely represented that EPS was no longer doing business with KMA: "As stated during our conversation yesterday, [EPS LLC] is a Colorado company.... Upon review of our information I see that we have done business in the past with a KMA Merchant Services LLC, an Arizona Corporate entity … although they are no longer active."

138. Contrary to EPS' COO's representations, EPS continued working with KMA, EPSA, Wigdore and Abdelmesseh long after the COO's July 18, 2013 email. For example, in an August 21, 2013 email sent from Abdelmesseh ("Mike Stewart") to Defendant McCann, Abdelmesseh stated:

> We took this deal away from Powerpay. We sold it with no reserve. Please approve the deal for 75K to 100K monthly for each MID [referring to merchant accounts created, each with a "Merchant Identification" number] and we collectively will monitor the account. If a reserve is needed at a later time we can make that happen or shut off the account if it is not performing. We can get a lot of business from this customer via referral channel.

139. EPS continued approving and processing for new merchants submitted by KMA and Wigdore, and continued processing for merchants previously referred to EPS by KMA, through at least the end of December 2013.

EPS Knowingly Concealed the Identities of Additional Merchants

140. EPS's company practice of knowingly processing for merchants whose true identities were concealed was not limited to the MNF Fictitious Companies. The practice applied to other merchants as well.

141. For example, in a September 17, 2013 email sent from EPS employee Chonda Pearson to an employee working in Wigdore's sales office, Pearson wrote: "Unfortunately this merchant has an open bankruptcy. We will be happy to process this deal with a new signer." Pearson's statement that the merchant circumvent Merrick's rules by simply finding a "new signer," is contrary to Merrick's underwriting policy that considered "any merchant that is currently in business bankruptcy" to be an "Unacceptable Merchant" for approval.

142. Similarly, in a May 20, 2013 email exchange between EPS employee Pearson and another employee in Wigdore's sales office, regarding a merchant called "M2M Gold," Pearson wrote: "This is the same signer—we need a different signer on the application." Pearson again reiterated this point two hours later, in a follow-up email, stating: "I spoke to Mike Peterson … We cannot do anything with it until we have a different signer."

143. Peterson and Abdelmesseh kept close track of the various merchants whose true identities were concealed behind different company names. For example, a spreadsheet attached to the January 30, 2014 email from "Mike Stewart" to Peterson listed numerous companies that belonged to particular "Groups." Each Group was

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by the Wigdore sales agent: “They are promising trips/cruises/getaways etc to merchants for signing up with EPS.” In reply, the other employee stated: “Yeah it’s well-known at this point.”

148. In another email exchange between EPS employees regarding “Jay

instructed Abdelmesseh, acting in his capacity as EPS's sales agent, to "spread out" KMA's client merchant's transactions across multiple merchant accounts opened in the names of several MNF Fictitious Companies. Peterson also kept close track of the various EPS client merchants whose identities were concealed behind different company names, and was fully aware that many of the MNF Fictitious Companies were related to the same underlying merchant or individual.

151. Similarly, EPS's principals, Defendants McCann and Dorsey, approved and oversaw the MNF fraudulent merchant accounts, and personally met with the sales agents who referred the MNF Fictitious Companies to EPS.

152. EPS did not have a separate department responsible for underwriting and approving merchant applications. Instead, EPS's principals, McCann and Dorsey, together with EPS's COO, were directly responsible for oving r0 -2.315 -5.556 -2.306 Td [(a

Merrick to terminate the merchant. Despite knowing that the new merchant was related to the previous client merchant, Dorsey approved the application.

157. Similarly, McCann personally approved numerous MNF Fictitious Company applications, including eight applications submitted by Wigdore within a span of just two days (May 17, 2012 – May 18, 2012), two of which explicitly indicated that Wigdore was a co-owner or co-officer of the merchant (A&D Marketing, Miller Marketing Group), and five of which indicated that the merchant had the exact same "KMA" email address (A&D Marketing, Global One Media, DePaola Marketing, Wisdom Management Group, National Marketing Group). Two applications approved by McCann indicated that the merchants shared the same business address, a fact highlighted by the EPS employee who conducted the "initial risk evaluation" of the merchants.

158. McCann and Dorsey closely monitored the referral of new merchants to EPS by EPS's sales agents, as evidenced in daily emails (titled "Daily Hot Sheets") sent by EPS employees to McCann and Dorsey throughout 2013. These Daily Hot Sheets provided McCann and Dorsey a daily log of all new merchants approved by EPS for processing, and identified the ISO sales agent who referred the merchant to EPS. The Daily Hot Sheets indicated that "Agent 2088" (KMA) was among EPS's top sales agents who were referring the highest number of merchant applications to EPS throughout 2013.

Defendants Are Jointly and Severally Liable For the MNF Transactions EPS Laundered Through Fraudulent Merchant Accounts

159. Both the KMA-Wigdore Defendants and the EPS Defendants are jointly and severally liable for the harm caused to consumers when they laundered MNF

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merchant accounts through which Defendants processed MNF charges to the consumers' credit card accounts.

163. Credit card laundering is illegal and prohibited by the rules and policies of the credit card networks. No countervailing benefits flow to consumers or the credit card industry marketplace from the Defendants' conduct because no legitimate business purpose exists for credit card laundering.

VIOLATIONS OF THE FTC ACT

164. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting comounts. AsB94.28 0.24 232 3094.8 pecis anre nfair

b) Approving and opening multiple merchant accounts in the names of numerous fictitious companies for the same underlying merchant, thereby concealing the true identity of the underlying merchant; and/or

c) Processing transactions for the same underlying merchant through multiple merchant accounts opened in the names of numerous fictitious companies, thereby concealing the true identity of the underlying merchant whose transactions were processed.

169. The Defendants' actions caused or were likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and that is not outweighed by countervailing benefits to consumers or competition.

170. Therefore, the Defendants' acts or practices, as described in Paragraphs 168 through 169 above, constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and (n).

VIOLATIONS OF THE TSR

171. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The FTC adopted the original Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.

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transaction that is not the result of a telemarketing credit card transaction between the

resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

184. Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

a) Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;

b) Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;

c) Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the TSR, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

d) Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

DATED this ____ day of July, 2017.

/s/ Michelle Chua
Michelle Chua